

Appl. No. 09/826,575
Amdt. Dated June 23, 2004
Reply to Office action of Mar. 23, 2004

REMARKS/ARGUMENTS

Applicants and Applicants' representative wish to thank the Examiner for taking time for an Interview of the present application on April 22, 2004. The Interview and prior consultations with the Examiner have been very helpful. The Amendments provided herein are consistent with discussions with the Examiner at the Interview and should further facilitate prosecution of this Application.

Claims 1-3, 5-16, 22-26, and 32-35, and 52-61 are pending in the Application. Claims 4, 17-21, 27-31 and 36-53 have been canceled, without prejudice. In an effort to facilitate and expedite the present examination, Applicants propose canceling claims 36-53 (without prejudice), with the intent of resubmitting these claims in later-filed continuation applications. New claims 62-72 have been added.

The drawings are objected to under 37 CFR 1.83(a). An additional drawing (FIG. 3) is submitted herewith for entry. Specifically, the new drawing shows the mylar bag laminated structure that is discussed in the specification and in the originally filed claims. No new matter has been entered. Acceptance of the drawing is respectfully requested.

Claim 58 is objected to because of certain formalities. The appropriate correction has been made.

Claims 1-3, 5, 9-14, and 22-26 are rejected under 35 U.S.C. § 103(a), as being unpatentable over the OSHA Irritant Smoke Protocol (the "OSHA reference"), in view of U.S. Patent No. 3,834,241 (Garren '241). Claims 6 and 7 are rejected under 35 U.S.C. § 103(a), as being unpatentable over the OSHA reference in view of U.S. Patent 3,834,241 (Garren '241), and further in view of U.S. Patent No. 5,073,347 (Garren '347). Claim 15 is rejected under 35 U.S.C. § 103(a), as being unpatentable over the OSHA reference in view of Garren '241, and further in view of U.S. Patent No. 3,938,392 (Rodrigues '392).

Claims 8, 16, 21, 32-46, 52, and 57 are rejected under 35 U.S.C. § 103(a), as being unpatentable over the OSHA reference in view of Garren '241 and further in view of U.S. Patent No. 3,840,009 (Michaels '009). Claims 36, 48, 49, 51, 58, 60, and 61 are rejected under 35 U.S.C. § 103(a), as being unpatentable over the OSHA reference in view of Garren '241 and further in view of U.S. Patent No. 5,302,344 (Perlman '344). Claims 50 and 59 are rejected under 35 U.S.C. 103(a), as being unpatentable over the OSHA reference in view of Garren '241 and Perlman '344, and further in view of U.S. Patent No. 6,098,802 (Asa '802).

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Finally, claim 47 is rejected under 35 U.S.C. § 103(a), as being unpatentable over the OSHA reference in view of Garren '241 and Michaels '009 and further in view of Rodrigues '392.

Applicants respectfully traverse each of the above 35 U.S.C. § 103(a) rejections. Applicants maintain its position, as presented in prior Responses, that the combination of the OSHA reference and the Garren '241 reference does not render any of the independent claims obvious.

Amended Claim 1 recites an apparatus for testing equipment located in a local environment by presenting a detectable indicator gas therein. The apparatus includes a one-piece, polymeric pump and container portion combination, a chemical substance stored in the container portion and which is reactive with air from the local environment, wherein the polymeric pump is integrally formed as one piece with the container portion, and an outlet that is severable to direct indicator gas into the local environment. Further, Claim 1 is amended to recite, and highlight, that the pump and the container portion are in fluid communication and define a *substantially fluid impermeable internal environment that includes the chemical substance* and is sealed from the local environment.

Applicants maintain (and hereby incorporates) its previously asserted arguments and positions regarding patentability of claim 1 over the cited prior art. Furthermore, Applicants have amended Claim 1 to include specific recitation of a defined, substantially fluid permeable internal environment that includes the chemical substance and sealed from the local environment. None of the OSHA reference, the Garren references, or any other cited reference, individually or in combination with any of the other references, teaches or suggests such a feature of an apparatus for testing equipment. Accordingly, amended Claim 1 and claims dependent from Claim 1 (Claims 2-3, 5-16, and 62-66) are in condition for allowance.

New Claim 62 depends from Claim 1 and further recites the container portion as including a first layer and a second layer both surrounding the chemical substance. The second layer is further recited as being a substantially fluid impermeable layer. None of the cited references teaches or suggests such a multi-layer construction providing a substantially fluid impermeable layer. Accordingly, Claim 62 contains additional patentable subject matter.

New Claim 63 is added to further recite that the second layer of Claim 62 is provided by a glass enclosure disposed about the chemical substance. Support for this feature of the inventive apparatus may be found on page 5, first paragraph of the Specification. This

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feature is an expansion of the multi-layer and/or fluid impermeable structural. Accordingly, no new matter is being presented and no additional prior art searches are required.

Claim 22 has been amended to recite a method of fit testing respiratory protection equipment. The method includes a step of storing a chemical substance that is reactive with air to produce an indicator gas in the form of irritant smoke. The method requires the provision of a polymeric squeeze bulb device that, together with a container, are in fluid communication and define a substantially fluid impermeable internal environment that is sealed from the local environment. Thus, for reasons as set forth above with respect to amended Claim 1, Claim 22 and claims dependent from Claim 22 are also in condition for allowance. Applicants also note that the Garren references are completely inapplicable to such a fit testing method.

New Claim 67 depends from Claim 22 and further recites the additional step of ensuring that operating the squeeze bulb does not generate a smoke volume exceeding a predetermined volume. This ensuring step includes selecting a polymeric squeeze bulb having a maximum pumping capacity that is below the predetermined volume, whereby the selected squeeze bulb is affixed to the container. This additional step, which finds support on pages 6-7 in the Specification, addresses a long-felt need of the prior art, as previously discussed with the Examiner. Accordingly, new Claim 68 recites additional patentable subject matter.

New Claim 68 further recites that the storing step in Claim 22 includes storing the chemical substance within a substantially fluid impermeable enclosure. New Claim 69 depends from Claim 68 and recites that the storing step includes storing the chemical substance in a breakable glass enclosure disposed within the container, and that the step of operating the squeeze bulb is preceded by a step of breaking the breakable glass. None of the cited references teaches or suggests such a step and accordingly, each of Claims 68 and 69 contain additional patentable subject matter.

New Claim 70 depends from Claim 68 and further recites storing the polymeric squeezable bulb device and container in a substantially fluid impermeable bag prior to the breaking and operating steps. This additional step provides yet another variation of the inventive method. Again, none of the cited references teaches or suggests this additional step. Accordingly, Claim 70 also contains additional patentable subject matter.

Claim 32 recites a method of manufacturing an apparatus for testing equipment in a local environment by presenting a detectable indicator gas therein. The method includes

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providing a flexible material and a second material integrally forming, as one piece, a container portion and a squeeze bulb using the flexible material, and applying the second material adjacent the flexible material to form a laminate therewith, wherein the laminate is substantially more fluid impermeable than the flexible material. Furthermore, Claim 32 recites that the container portion and the pump are in fluid communication and define a substantially fluid impermeable internal environment that includes a chemical substance and is sealed from the local environment. For reasons as set forth above with respect to Claim 1 and/or Claim 22, the method of manufacturing recited by Claim 32 is also patentable over the cited prior art.

The remaining claims in the Application contain the same or similar features and limitations presented in the claims discussed above. Accordingly, each of these claims is also patentable over the cited prior art.

In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to withdraw the outstanding rejection of the claims and to pass this application to issue.

If the appropriate Petition for an Extension of Time is not attached hereto (or any other Petition required of the application), this statement shall serve as Applicants' Petition to the U.S.P.T.O. Please charge any fees that are due for any Petition or any fee required of this filing to the deposit account of Paula D. Morris & Associates, P.C., Account No. 50-0997 under Order No. STDL-P02054US1.

The undersigned is available for consultation at any time, if the Examiner believes such consultation may expedite the resolution of any issues.

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Respectfully submitted,

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